



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,016	03/06/2001	Jeffrey A. Livesay	Wellogix-002-CIP	1305
21897 7590 04/28/2009 THE MATTHEWS FIRM 2000 BERING DRIVE SUITE 700 HOUSTON, TX 77057				
EXAMINER COLBERT, ELLA				
ART UNIT		PAPER NUMBER		
3696				
MAIL DATE		DELIVERY MODE		
04/28/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/801,016

**Applicant(s)**

LIVESAY ET AL.

**Examiner**

Ella Colbert

**Art Unit**

3696

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

#### **DETAILED ACTION**

1. Claims 1-4, 15, 22-25, 34, 51, 54, and 64 are pending. Claims 22-25, 34, 51, 54, and 64 were cancelled in a response to a Restriction filed 10/16/08. The election of claims 1-4 and 15 was made without traverse and was filed on 05/15/08.

Claims 1-4 and 15 are pending in this response filed 02/06/09.

Group I, claims 1-4 and 15 were elected for prosecution on the merits and claims 22-25, 34, 51, 54, and 64 have been cancelled without prejudice.

Applicants' election without traverse of claims 1-4 and 15 in the response filed 02/06/09 is acknowledged.

Claims 22-25, 34, 51, 54, and 64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. There being no allowable generic or linking claim. Election was made without traverse in the reply filed on 02/06/09..

2. An RCE with a Request for Extension of Time was filed 05/22/08 in Response to the Final Office Action and entered.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/22/08 has been entered.

***Claim Objections***

Claim 2-4 and 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Rule 1.75 (c) provides that "[O]ne or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. See also MPEP 608.01 (n), under the heading "III Infringement Test", second paragraph, wherein it states, "[t]he test for a proper dependent claim under the fourth paragraph of 35 USC 112 is whether the dependent claim includes every limitation of the claim from which it depends". See MPEP 608.01 (n).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The "electronic comparison circuitry" and "complex project" are not found in Applicant's Specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "actual performance data" and it is unclear and indefinite what Applicant means by "actual performance data from the seller". There has not been any step prior to this step to indicate there has been any actual performance data. Does Applicant mean the actual performance data is from the estimated data?

Claim 4 recites "measurement" and "parameter" which are varied and indefinite terms.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over (US 7,440,909) Puri et al, hereafter Puri in view of (US 4,700,318) Ockman.

Claim 1. Puri discloses, A method for procuring either at least one good or at least one service, or at least one good and at least one service, for reconciling actual

performance data : with estimated data within a processor for a complex project ordered by a buyer and performed by a seller, the method comprising:

obtaining and storing in the estimated data from any source relating to the complex project (col. 1, lines 17-26 and col. 4, lines 21-36);; receiving and storing in the processor the actual performance data from the seller via a communication network (col. 3, lines 43-col. 4, line 21-col. 5, line 48).

Puri failed to disclose, using electronic comparison circuitry in the process to compare the actual performance data to the estimated data to determine any discrepancy between the actual performance data and the estimated data; and sending an electronic notification of any such discrepancy to at least one of the buyer and the seller, wherein notification of any such discrepancy is provided to the seller, whereby the seller can reconcile or account to the buyer for any such discrepancy. Ockman discloses, using electronic comparison circuitry in the process to compare the actual performance data to the estimated data to determine any discrepancy between the actual performance data and the estimated data ; and sending an electronic notification of any such discrepancy to at least one of the buyer and the seller, wherein notification of any such discrepancy is provided to the seller, whereby the seller can reconcile or account to the buyer for any such discrepancy (col. 2, line 20-col. 4, line 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Ockman in Puri because such an incorporation would allow Puri to render intelligible at a glance the schedule status of selected increments of

structure at any given stage in a complex construction project (Ockman, col. 1, lines 38-41).

Claims 2-4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 7,440,909) Puri et al, hereafter Puri in view of (US 4,700,318) Ockman and further in view of (US 5,826,244) Huberman.

Claim 2. Puri and Ockman failed to disclose, The method for reconciling as described in claim 1, wherein the actual performance data comprises an actual cost, in whole or in part, of either goods or services, or goods and services provided by the seller in performance of the complex project. Huberman discloses, The method for reconciling as described in claim 1, wherein the actual performance data comprises an actual cost, in whole or in part, of either goods or services, or goods and services provided by the seller in performance of the complex project (col. 13, lines 14-38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Huberman in Puri because such an incorporation would allow Puri to have an economical efficient market in which resource allocation and pricing are optional (Huberman- col. 2, lines 48-50).

Claim 3. Puri discloses, The method for reconciling as described in claim 1, wherein the actual performance data comprises an actual accounting, in whole or in part, of either goods or services., or goods and services provided by the seller in performance of the complex project (col. 8, line 14-col. 9, line 12).

Claim 4. Puri discloses, The method for reconciling as described in claim 1, wherein the

actual performance data comprises at least one measurement of at least one parameter defining at least one aspect of" the complex project (col. 9, line 13-col. 10, line 29).

Claim 15. Puri discloses, The method for reconciling as described in claim 1, wherein the processor generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the complex project, wherein the complex project is defined in terms of at least one parameter, and wherein the converts the at least one parameter into the at least one request, and communicates the at least one request to the seller (col. 1, lines 17-26, col. 3, line 43-col. 4, line 5, and col. 8, line 14-col. 9, line 3)..

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wood (US 5,381,332) disclosed project management.

Oliver (US 5,907,490) disclosed project management.

Justice (US 6,829,595) disclosed internet billing solutions.

Wakelam et al (US 6,859,768) disclosed modeling and project cost estimation and scheduling system.

### **Inquiries**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741.



The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/  
Primary Examiner, Art Unit 3696

April 17, 2009